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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,254	11/17/2003	Jon F. Jensen	JENJO122024	5000

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JE

Office Action Summary

Application No.

10/715,254

Applicant(s)

JENSEN, JON F.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>12/1/04</u> |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>42/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The final rejection mailed on 10/7/04 has been withdrawn in view of the new rejection as discuss below.
2. Newly submitted claims 17-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are method claims and are restrictable under product and process of using. In the restriction, the product as claimed can be used in a materially different process of using that product. For example, the stackable planter as claimed in the product claim can be used for shipment of other elements (any elements can be shipped since the plante4r is just a tray with a plurality of cups) besides plants (note the functional language of "for holding soil") and the stacking for saving space, thus, the product can be used in a materially different process.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-20 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

A telephone call was made to David McKenzie around 9/21/04 for a restriction requirement. However, that requirement is withdrawn due to the comment regarding originally presented invention because the newly submitted claims 17-20 are considered to be distinct from the invention originally claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Coureau (FR002550073A1) in view of Powell et al. (US 612073).

For claim 1, Coureau teaches in fig. 3 a stackable planter comprising a plurality of planter trays 1'; an annular inner rib 23 defining a center portion of at least one planter tray, the center portion having an aperture (the open bottom); an annular inner rib 23 defining a center portion of another planter tray 1' having a bottom wall 25 that extends across the center portion and defines a recess for holding soil, whereby one or more plants can be placed in the center. However, Coureau is silent about the tray having at least one planter cup at a periphery for holding soil.

Powell et al. teach a stackable planter comprising a plurality of trays, each tray having at least one planter cup 64 at a periphery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of cups as taught by Powell et al. at a periphery of each of the tray of Coureau in order to increase numbers of plants in a given space (see abstract of Powell et al.).

For claim 2, Coureau as modified by Powell et al. (emphasis on Coureau) further teaches wherein the rib is sized to separate the at least one planter cup (as modified by Powell) from the aperture of the center portion.

For claim 3, Coureau as modified by Powell et al. (emphasis on Coureau) further teaches wherein the inner rib is configured to retain soil within the at least one planter cup (as modified by Powell) separate from the center portion.

For claim 4, in addition to the above, Powell et al. further teach wherein a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition (see fig. 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition as further taught by Powell et al. in the stackable planter system of Coureau as modified by Powell et al. in order to save space in storing the system by nesting the trays.

For claim 5, Coureau as modified by Powell et al. (emphasis on Powell) teaches the cup is round/oval.

For claim 6, Coureau as modified by Powell et al. (emphasis on Coureau) teaches wherein a base of at least one planter tray is configured to removably engage an upper portion of a second planter tray (see fig. 3 of Coureau, in the area of where ref. 27 is pointing at, the base has a ledge to connect with the upper portion of another tray).

For claim 7, Coureau as modified by Powell et al. (emphasis on Coureau) teaches an engagement mechanism configured to secure the trays in a terraced configuration (see fig. 3 of Coureau, in the area of where ref. 27 is pointing at, the base has a ledge to connect with the upper portion of another tray).

5. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Coureau as modified by Powell et al. as applied to claim 1 above, and further in view of Farkas (US 4614056).

Coureau as modified by Powell et al. is silent about the tray is further configured to suspend from a support.

Farkas teaches a stackable planter system comprising planter trays 1 that are configured to be suspended from a support by providing suspension mechanism and S-hook. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ suspension mechanism and S-hook as taught by Farkas in the planter system of Coureau as modified by Powell et al. in order to suspend the system from a support surface.

6. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Coureau as modified by Powell et al. as applied to claim 1 above, and further in view of Watson (GB2173984A).

Coureau as modified by Powell et al. is silent about a cart to support the plurality of planter trays, the cart having a rim and a plurality of wheels.

Watson teaches a stackable planter system comprising a plurality of trays 2 being supported on a cart 14,16 having a rim 16 and wheels 15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cart with a rim and wheels as taught by Watson to support the tray system of Coureau as modified by Powell et al. in order to allow a user to move the system to another location by rolling the system on the wheels of the cart.

7. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Coureau as modified by Powell et al. and Watson as applied to claims 1 & 9 above, and further in view of Mills (US 3686791).

Coureau as modified by Powell et al. and Watson is silent about a plurality of stakes attached to the cart.

Mills teaches a stackable planter system comprising a plurality of trays and stakes X,X' to hold down the trays. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the stakes as taught by Mills to hold down the trays in the system of Coureau as modified by Powell et al. and Watson from moving or dislodging from each other. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the stakes as taught by Mills to the cart of Coureau as modified by Powell et al. and Watson so as to hold down the trays while moving them.

8. **Claims 13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Coureau as modified by Powell et al. as applied to claim 1 above, and further in view of Lee (US 5440836).

Coureau as modified by Powell et al. is silent about a watering tank having a port, an opening to receive a plug, and an extension.

Lee teaches a stackable planter system comprising a watering tank (the smaller top container as shown in fig. 3) configured to fit within the center portion of a planter tray 90 wherein the watering tank comprises a port (see arrow where water comes out to the next planter) configured to distribute water to the trays, wherein the watering tank

further comprises an opening (where pipe 102 comes in) configured to receive water and a plug (the plug around pipe 102 opening coming into the tank) for the opening configured to measure nutrients, wherein the tank comprises an extension 102 configured to fit downward through the center portion of at least one tray stacked below the watering tank.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a watering tank having a port and an opening to receive a plug as taught about by Lee in the planter system of Coureau as modified by Powell et al. in order to provide water/nutrient to the plants grown in the planter trays.

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an extension as further taught by Lee in the planter system of Coureau as modified by Powell et al. & Lee in order to replenish the tank with water/nutrient pumping from the pump 104 of Lee.

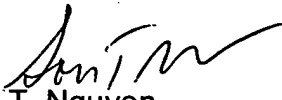
Response to Arguments

9. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
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stn